

1 Michael Winsor  
2 Montana State Auditor's Office  
3 840 Helena Avenue  
4 Helena, MT 59601  
5 (406) 444-2004

6 Attorney for the Department of Insurance

7  
8 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**  
9 **STATE AUDITOR'S OFFICE**  
10 **STATE OF MONTANA**

11 IN THE MATTER OF THE PROPOSED  
12 AGENCY ACTION REGARDING THE  
13 INSURANCE PRODUCER'S LICENSE OF  
14 LINDA A. LUCOTCH, License #906713

INS-2009-74

15 **CONSENT AGREEMENT**  
16 **AND FINAL ORDER**

17 The State Auditor and the Montana Department of Insurance (Department), pursuant to  
18 the authority of the Montana Insurance Code, §§ 33-1-101 *et seq.* and Mont. Code Ann. § 2-4-  
19 603, and Linda A. Lucotch, hereby mutually agree as follows:

20 **FACT ASSERTIONS**

21 1. At all times material hereto, Insurance Producer, Linda A. Lucotch (Lucotch) was  
22 employed by Central Montana Insurance Center (CMIC) in Lewistown, Fergus County, Montana.

23 2. In April of 2009, CMIC bookkeeper Barb Burley (Burley) found inconsistencies  
24 within the bookkeeping. CMIC found that checks appearing to be written to an insurance  
25 company were in fact written to Lucotch and cashed by Lucotch.

26 3. On or about April 27, 2009, CMIC owners Ray Pryor and Bruce Marshall (Marshall)  
27 along with Burley met with Lucotch regarding their concerns that she had been embezzling from  
28 the CMIC premium trust account. Lucotch admitted taking money and advised that she would  
pay it all back.

4. On April 27, 2009 Lucotch e-mailed Pryor at CMIC advising that she was sorry for the mess she created and a check for \$52,000.00 was on the way.

5. On April 29, 2009 Lucotch again contacted Pryor at CMIC and advised that she had \$52,000.00 but a 48 hour hold was put on the deposit.

6. On April 30, 2009, Lucotch provided CMIC a cashiers check to CMIC for \$52,000.00.

**7. On May 1, 2009, Lucotch's employment was terminated by CMIC.**

8. On or about May 1, 2009, CMIC partner Ray Pryor (Pryor) contacted Fergus County Attorney Tom Meisner with concerns that an employee, Lucotch, had embezzled from their premium trust account. Lewistown Police Department Patrolman Scott Murray was assigned the case and completed the investigation.

9. On June 24, 2009, a Warrant was issued through Fergus County District Court for the arrest of Lucotch. Lucotch was arrested on July 7, 2009 in Cascade County, Montana.

10. On September 18, 2009, Department Licensing Chief Pam Daugherty received a call from Fergus County Deputy County Attorney Jean Adams (Adams) with information that insurance producer Linda Lucotch (Lucotch) had been charged with embezzling insurance premiums from CMIC's premium trust account (CMIC). It was also brought to the attention of the Department that Lucotch was working at the Cogswell Agency in Great Falls, Montana. Thereafter, the matter was referred to the State Auditor's Legal and Investigations divisions.

11. On September 23, 2009, Investigator John Forsman (Forsman) met with Adams at her office in the Fergus County Courthouse. Adams provided Forsman with copies of the Police Department reports provided to her by Patrolman Murray.

12. Department investigation and review of the criminal complaint against Lucotch revealed that, during the act of embezzlement from CMIC, in the time period from approximately April of 2006 through February of 2009, Lucotch falsified 33 payments from CMIC so it would appear that CMIC paid premiums from the CMIC premium trust account to various policies (which were fictitious) when in fact she made the payments to herself.

1           13. Lucotch executed and concealed her scheme by creating fictitious policyholder  
2 accounts, writing checks to herself from the premium trust account, intercepting CMIC bank  
3 statements, whitening-out the endorsee (herself) in the copies of the checks enclosed with the bank  
4 statements, writing in an insurance company name as the endorsee, and re-copying the statement  
5 check copies, so it would appear, to CMIC, from the bank statement materials that the checks  
6 were written by Lucotch to the insurance company on behalf of policyholders.

7           14. On November 18, 2009, Department Chief Investigator John Forsman contacted  
8 Lucotch at the Cogswell Agency and informed her that he wanted to talk to her. Lucotch refused  
9 to speak to Forsman and instructed Forsman to contact her attorney.

#### 10                           CONCLUSIONS OF LAW

11           1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-  
12 15-1903.

13           2. The Montana Insurance Department is under the control and supervision of the  
14 Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

15           3.       The Commissioner and Insurance Department have jurisdiction over this matter.  
16 Mont. Code Ann. § 33-1-311.

17           4.       The Commissioner shall administer the Insurance Department to protect insurance  
18 consumers. Mont. Code Ann. § 33-1-311(3).

19           5.       Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact  
20 a business of insurance in Montana or a business relative to a subject resident, located, or to be  
21 performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. §  
22 33-1-101, *et seq.*

23           6. The Commissioner may suspend, revoke, refuse to renew, refuse to issue an insurance  
24 producer's license, may levy a civil penalty in accordance with Mont. Code Ann. § 33-1-317, or  
25 may choose any combination of actions when an insurance producer has:

26                   engaged in an act or practice for which issuance of the license could have been refused,  
27                   violated or failed to comply with a provision of the Montana Insurance Code, Mont. Code  
28                   Ann. § 33-1-101, *et seq.*;

1 improperly withheld, misappropriated, or converted to the licensee's own use money or  
2 property belonging to policyholders, insurers, beneficiaries, or others and received in  
3 conduct of business under the license or in the conduct of the affairs under the license; or  
4 used fraudulent, coercive, or dishonest practices, or when the licensee is a sources of  
injury or loss to the public.

5 Mont. Code Ann. § 33-17-1001(1)(a), (c), and (f).

6 7. Lucotch committed multiple violations of Mont. Code Ann. § 33-17-1001(1), during  
7 the course of embezzling from her employer. By embezzling from her employer, CMIC, and  
8 falsifying payments from CMIC so as to create the appearance she was making premium  
9 payments on (fictitious) policies when in fact she made the payments to herself, Lucotch violated  
10 Mont. Code Ann. § 33-17-1001(1)(a),(c), and (f).

11 8. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose a fine not to  
12 exceed the sum of \$25,000 upon a person found to have violated a provision of this code or  
13 regulation promulgated by the commissioner, except that the fine imposed upon insurance  
14 producers or adjusters may not exceed \$5,000 per violation.

### 15 AGREEMENT

16 The Department, together with the Respondent Linda A. Lucotch, hereby stipulate and  
17 agree to the following:

18 1. Lucotch acknowledges the Commissioner and Department have jurisdiction over the  
19 subject matter of the above-entitled proceeding.

20 2. Lucotch acknowledges she is satisfied with the services of her attorney.

21 3. Lucotch acknowledges she has read and understands each term of this Consent  
22 Agreement and Final Order, admits the allegations contained herein above in the Fact Assertions,  
23 and enters into this Consent Agreement voluntarily and without reservation.

24 4. Lucotch and the Department stipulate and agree that this Consent Agreement resolves  
25 the alleged violations set forth in the Notice of Proposed Agency Action and Opportunity for  
26 Hearing and the Temporary Order to Cease and Desist and Opportunity for Hearing.

27 5. Lucotch and the Department hereby acknowledge and agree that this Consent  
28

1 Agreement constitutes the entire agreement between the parties and that no other promises or  
2 agreements, either express or implied, have been made by the Department or by any member,  
3 officer, agent or representative of the Department to induce Respondent to enter into this Consent  
4 Agreement.

5 6. Any notice provided for in this Consent Agreement and any other communication  
6 between the Department and Lucotch are legally sufficient if given in the following manner:

7 (a) notice to the Department may be given by mailing the notice by registered or certified  
8 mail, postage paid and addressed to the Department as follows:

9 Michael Winsor  
10 Montana State Auditor's Office  
840 Helena Avenue  
Helena, MT 59601

11 (b) notice to Respondent may be given by mailing the notice by registered or certified  
12 mail, postage paid and addressed as follows:

13 Linda A. Lucotch  
14 1804 7<sup>TH</sup> Ave. S.  
Great Falls, MT 59405

15 (c) Either party shall give to the other party notice of change of address for the giving of  
16 notices in the manner provided in this Consent Agreement, if applicable.

17 7. With respect to the Notice of Agency Action and Opportunity for Hearing and the  
18 Temporary Cease and Desist Order and Opportunity for Hearing, Lucotch understands that she  
19 has a right to a contested case hearing and specifically and affirmatively waives a contested case  
20 hearing, the right to judicial review, and elects to resolve this matter on the terms and conditions  
21 set forth herein.

22 8. Lucotch fully and forever releases and discharges the Commissioner, the Department,  
23 and all Department employees and agents from any and all actions, claims, causes of action,  
24 demands, or expenses for damages or injuries, whether asserted or unasserted, known or  
25 unknown, foreseen or unforeseen, arising out of this administrative action and the Fact  
26 Assertions and Conclusions of Law this Consent Agreement.

27 9. The parties acknowledge and agree that this Consent Agreement may not be modified  
28

1 orally, and any subsequent modifications to this Consent Agreement must be mutually agreed  
2 upon in writing to be effective.

3 10. The Department and Lucotch agree that this Consent Agreement shall be incorporated  
4 into and made a part of the attached Final Order issued by the Commissioner herein.

5 11. Lucotch further understands that, upon the signing of the Final Order by the  
6 Commissioner or her representative, this Consent Agreement and Final Order will be an order of  
7 the Commissioner and failure to comply with it may constitute a separate violation of the  
8 Montana Insurance Code, and as provided in Mont. Code Ann. § 33-1-318, may result in  
9 subsequent legal action by the Department.

10 12. Alleged violations of this Consent Agreement shall be noticed in accordance with  
11 Paragraph 6 of this Consent Agreement. Alleged violators will be provided an opportunity for a  
12 contested case hearing and rights to appeal under the Montana Administrative Procedures Act.

13 13. Upon execution of this Consent Agreement and full payment of the administrative  
14 fine as set forth in Paragraph 16 below, the Department will not commence any further  
15 administrative, civil, or other legal action based upon the allegations set forth in this action that  
16 occurred prior to the execution of this Consent Agreement.

17 14. This Consent Agreement shall be effective upon signing of the Final Order.

18 15. Lucotch acknowledges that this Consent Agreement and Final Order are public  
19 records under Montana law and as such may not be sealed or otherwise withheld from the public.

20 16. The Department and the Lucotch further stipulate and agree as follows:

21 (a) Lucotch's individual insurance producer's license will be revoked.

22 (b) Lucotch understands that this revocation will be reported to the NAIC producer  
23 database and any other states where she may be licensed or seeks to be licensed must be notified  
24 of her license revocation pursuant to Mont. Code Ann. § 33-17-214(6).

25 (c) Lucotch shall pay an administrative fine in the amount of Fifty Thousand Dollars  
26  
27  
28

1 (\$50,000) of which Forty Five Thousand (\$45,000) shall be suspended, subject to full  
2 performance of this agreement.

3 (d) Lucotch shall pay the administrative fine referred to in the preceding paragraph to the  
4 Department in regular monthly installment payments in the amount of One Hundred Forty  
5 Dollars (\$140), which shall be due the 15<sup>th</sup> day of every month beginning March 15, 2010, until  
6 paid in full. Checks should be made payable to the Montana State Auditor's Office, and should  
7 be sent to the attention of: Mike Winsor, 840 Helena Avenue, Helena, Montana, 59601.

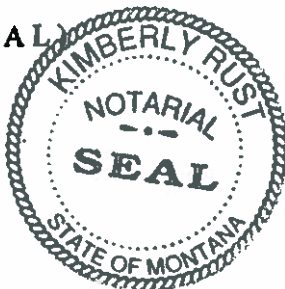
8 (e) Nothing in this subsection should be construed to limit or prevent Respondent from  
9 paying in full, in advance, or more than the agreed monthly installment amount.

10  
11 Linda A. Lucotch  
12 LINDA A. LUCOTCH

12/18/2009  
DATE

13 SUBSCRIBED and SWORN to before me this 18<sup>th</sup> day of December, 2009.

14  
15 (SEAL)



16 Kimberly Rust  
17 (Signature)

18 Kimberly Rust  
19 (Printed name)  
20 Notary Public for the State of Montana  
21 Residing at Moccasin MT  
22 My commission expires: July 17, 2010

23 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

24 12/28/09  
25 Date

26 Michael Winsor  
27 Michael Winsor  
28 Attorney for the Department of Insurance

1 **FINAL ORDER**

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 2-4-  
3 603, MCA and § 33-1-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement  
4 and Final Order and good cause appearing therefor,  
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6 IT IS ORDERED that the foregoing Consent Agreement between the Insurance  
7 Department and the Respondent, Linda A. Lucotch, is hereby adopted as if set forth fully herein.

8 DATED this 28<sup>th</sup> day of December, 2009.  
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10 MONICA J. LINDEEN  
11 State Auditor and Commissioner of Insurance  
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13 By: Robert W. Moon  
14 ROBERT W. MOON  
15 Deputy Commissioner of Insurance  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this 28<sup>th</sup> day of December, 2009, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by depositing the same in the United States mail postage paid and addressed as follows:

Jon A. Oldenburg, Esq.  
505 W. Main, Ste. 309  
Lewistown, MT 59457

Michael Winsor  
Insurance Department

  
Montana State Auditor's Office